

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE & INSPECTION**

**IN RE: FIRST MENDON LLC  
ONE ENERGY, INC**

**FILE NO.: OCI-UST-18-21-00793**

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named parties (“Respondents”) have violated certain statutes and/or administrative regulations under the DEM's jurisdiction.

B. Administrative History

On 23 September 2016, 31 March 2017 and 27 November 2017, the DEM notified one or both Respondents of the statutory deadline for the permanent closure of the underground storage tanks at the facility and the actions required to keep the facility in compliance with the law and the Rhode Island Code of Regulations titled *Rules and Regulations for Underground Storage Facilities Used for Regulated Substances and Hazardous Materials 250 (RICR-140-25-1)* (the “UST Regulations”). Respondents failed to remove the tanks by the statutory deadline.

C. Facts

- (1) The property is located at 3492 Mendon Road, Assessor's Plat 53, Lot 1625 in the Town of Cumberland, Rhode Island (the “Property”). The Property includes a motor fuel dispensing system, a convenience store and underground storage tanks (“USTs” or “tanks”) that are used for storage of petroleum products and are subject to the UST Regulations (the "Facility").
- (2) FIRST MENDON LLC owns the Property.
- (3) ONE ENERGY, INC. operates the Facility.
- (4) The Facility is registered with the DEM and is identified as UST Facility No. 00793.

- (5) The USTs are registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Product Stored
001	1984	8,000 gallons	Gasoline
002	1982	10,000 gallons	Gasoline
007	2004	4,000 gallons	Diesel

- (6) UST Nos. 001 and 002 and their product pipelines were single-walled with no secondary containment.
- (7) On 21 February 2018, the DEM inspected the Facility. The inspection revealed that UST Nos. 001 and 002 were out of service.
- (8) On 11 April 2018, the USTs and their product pipelines were removed from the ground and permanently closed.

D. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **UST Regulations, Rule 8.04(A) (recently amended to Part 1.10D.1.a)** – requiring owners/operators of single-walled USTs and product pipelines installed before 8 May 1985 to permanently close the USTs and product pipelines by 22 December 2017.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

**\$12,909**

- (2) The proposed administrative penalty is calculated pursuant to the Rhode Island Code of Regulations titled *Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)* and must be paid to the DEM within 30 days of your receipt of the NOV. Payment shall be in the form of a certified check, cashiers check or money order made payable to the “General Treasury - Water & Air Protection Program Account,” and shall be forwarded to the DEM’s Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.
- (3) Penalties assessed against Respondents in the NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM's Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. All requests for hearing MUST:
  - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
  - (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of the NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk  
DEM - Administrative Adjudication Division  
235 Promenade Street, Suite 350  
Providence, RI 02908-5767

- (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
  - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Part 1.7B of the Rhode Island Code of Regulations titled *Rules and Regulations for the Administrative Adjudication Division (250-RICR-10-00-1)*.
- (2) A copy of each request for hearing must also be forwarded to:

Tricia Quest, Esquire  
DEM - Office of Legal Services  
235 Promenade Street, 4<sup>TH</sup> Floor  
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner regarding any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (vi) and 42-17.6-4(b) and (c).

- (5) Failure to comply with the NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of the NOV is being forwarded to the Town of Cumberland, Rhode Island, wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2 (31), as amended.
- (7) The NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Tricia Quest of the DEM's Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM's Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

By: \_\_\_\_\_  
David E. Chopy, Administrator  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

CERTIFICATION

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_  
the within Notice of Violation was forwarded to:

FIRST MENDON LLC  
c/o Corporation Service Company, Registered Agent  
222 Jefferson Boulevard  
Warwick, RI 02888

ONE ENERGY, INC.  
c/o CT Corporation System, Registered Agent  
450 Veterans Memorial Parkway, Suite 7A  
East Providence, RI 02914

by Certified Mail.

\_\_\_\_\_



## ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST  
 File No.: OCI-UST-18-21-00793  
 Respondents: FIRST MENDON LLC and ONE ENERGY, INC.

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
D (1) – Maintaining single-walled USTs and pipelines	Type II <i>(\$ 12,500 Max. Penalty) *</i>	Major	\$6,250	2 UST systems	\$12,500
<b><i>SUB-TOTAL</i></b>					<b>\$12,500</b>

\*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NON-COMPLIANCE			
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT COMPLY. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:			
- THERE IS NO IDENTIFIABLE BENEFIT FROM NONCOMPLIANCE; OR			
- THE AMOUNT OF ECONOMIC BENEFIT CAN NOT BE QUANTIFIED.			
DESCRIPTION OF BENEFIT	CALCULATION		AMOUNT
Failing to permanently close the USTs. The economic benefit of non-compliance was determined by using an EPA computer model titled <i>BEN</i> that performs a detailed economic analysis. The dates, dollar amounts and values used in this analysis are listed in this table.	<ul style="list-style-type: none"> <li>▪ Profit Status</li> <li>▪ Filing Status</li> <li>▪ Initial Capital Investment</li> <li>▪ One-time Non-depreciable Expense</li> <li>▪ First Month of Non-compliance</li> <li>▪ Compliance Date</li> <li>▪ Penalty Due Date</li> <li>▪ Useful Life of Pollution Control</li> <li>▪ Equipment Annual Inflation Rate</li> <li>▪ Discount Compound Rate</li> </ul>	Other than a C Corp.  \$50,000  December 2017 4/11/18 3/1/19    7.3%	\$409
<b><i>SUB-TOTAL</i></b>			<b>\$409</b>

## **ADMINISTRATIVE PENALTY SUMMARY (continued)**

### **COST RECOVERY**

**ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.**

A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

**TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$12,909**

# PENALTY MATRIX WORKSHEET

CITATION: Maintaining single-walled USTs and product pipelines  
 VIOLATION NO.: D (1)

TYPE		
<p style="text-align: center;">_____ TYPE I</p> <p><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;"><u>X</u> TYPE II</p> <p><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">_____ TYPE III</p> <p><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p><b>FACTORS CONSIDERED:</b></p> <p>Taken from Part 1.10A.1.b of the Rhode Island Code of Regulations titled <i>Rules and Regulations for Assessment of Administrative Penalties (250-RICR-130-00-1)</i></p> <ol style="list-style-type: none"> <li>(1) <b>The extent to which the act or failure to act was out of compliance:</b> Respondents failed to permanently close UST Nos. 001 and 002 and their product pipelines by the 22 December 2017 deadline and maintained them in the ground in violation of the law and the UST Regulations until 11 April 2018. The maintenance of single-walled USTs and product pipelines beyond 22 December 2017 is prohibited. Single-walled USTs and pipelines present a threat to the environment and public health and safety as there is no secondary containment to prevent releases of petroleum products and hazardous materials directly to the subsurface. Failure to comply increased the likelihood of a release of the regulated substance to the environment and the resultant threats to groundwater resources and public health and safety.</li> <li>(2) <b>Environmental conditions:</b> The Facility is in a densely developed area with numerous potential vapor receptors including commercial and residential structures and underground utilities. The Facility is in a GA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment. The USTs were installed within 700 feet of a GAA groundwater classification zone, which are groundwater resources designated as suitable for drinking water use without treatment, and which are located wellhead protection areas for community water supply wells, groundwater reservoirs and portions of their recharge areas and in groundwater dependent areas. The Facility is in a non-community water supply wellhead protection area and within 700 feet of a community water supply wellhead protection area. The USTs were installed within 950 feet of a groundwater recharge area. The Facility is located within 500 feet of freshwater stream. The Facility is in the Blackstone River watershed.</li> <li>(3) <b>Amount of the pollutant:</b> Considered, but not utilized for this calculation.</li> <li>(4) <b>Toxicity or nature of the pollutant:</b> The volatile nature of gasoline presents both a potential public health hazard (due to potential inhalation of benzene) and a potential public safety hazard (due to the potential for explosion). Gasoline can cause significant soil and groundwater contamination if released to the environment. Certain petroleum constituents are potentially harmful to human health and safety and the environment. Benzene, a component of gasoline, is a known carcinogen.</li> <li>(5) <b>Duration of the violation:</b> 3 1/2 months – 22 December 2017 to 11 April 2018.</li> <li>(6) <b>Areal extent of the violation:</b> Considered, but not utilized for this calculation.</li> </ol>		
(continued)		



(continued from the previous page)

- (7) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the non-compliance:** Respondents failed to take reasonable and appropriate steps to prevent the non-compliance by permanently closing the USTs by 22 December 2017. The DEM issued written notices to one or both Respondents on 23 September 2016, 31 March 2017 and 27 November 2017 informing the companies of the required actions to comply with the law and the UST Regulations. Respondents mitigated the noncompliance by removing and permanently closing the USTs and pipelines from the ground on 11 April 2018.
- (8) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** Considered, but not utilized for this calculation.
- (9) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** Negligence is attributable to Respondents for their failure to comply with the UST Regulations. Respondents, as owners and operators of the Facility, had full control over the occurrence of the violation.
- (10) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

<u>  X  </u> MAJOR	MODERATE	MINOR
--------------------	----------	-------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	<b>MAJOR</b>	\$12,500 to \$25,000	\$6,250 to \$12,500 <b>\$6,250</b>	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250